

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN LAMAR MITCHELL, #220 771 *
Petitioner, *v. * 2:08-CV-57-MHT
WARDEN CUMMINS, *et al.*, * (WO)
Respondents. *

RECOMMENDATION OF THE MAGISTRATE JUDGE

The instant cause of action is pending before this court on a 28 U.S.C. § 2254 petition for habeas corpus relief filed by John Mitchell, a state inmate, on January 24, 2008. Petitioner seeks to challenge matters related to a revocation of probation/split sentence entered against him by the Circuit Court for Cleburne County, Alabama. In this petition, Petitioner asserts claims that he was denied the assistance of counsel, due process, and equal protection, he received an inadequate written order revoking his probation, and he was denied the right to appeal the trial court's decision to revoke his probation.

DISCUSSION

This court, "in the exercise of its discretion and in furtherance of justice," may transfer Petitioner's application for writ of habeas corpus to "the district court for the district within

which the State court was held which convicted" Petitioner. 28 U.S.C. § 2241(d). Petitioner challenges matters regarding a revocation of parole which occurred in the Circuit Court for Cleburne County, Alabama. Cleburne County is located within the jurisdiction of the United States District Court for the Northern District of Alabama. In light of the foregoing, the court concludes that a transfer of this case to such other court for hearing and determination is appropriate.¹

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Northern District of Alabama pursuant to the provisions of 28 U.S.C. § 2241(d).

It is further

ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before **March 5, 2008**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

¹A decision on Petitioner's application for *in forma pauperis* status (Doc. No. 2) is reserved for ruling by the United States District Court for the Northern District of Alabama.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 21st day of February 2008.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE